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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/485,187	06/26/2000	Marion Kwart	147-191P	1628
2292	7590	11/18/2003	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			KUBELIK, ANNE R	
			ART UNIT	PAPER NUMBER
			1638	

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/485,187	Applicant(s) KWART ET AL.	
	Examiner Anne R. Kubelik	Art Unit 1638	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 8/7/03 and 10/16/03 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 10/3/03. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-3, 5, 8-14, 16-37.

Claim(s) withdrawn from consideration: 4, 6 and 7.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 8/7/03.
10. ☒ Other:

Continuation of 5. does NOT place the application in condition for allowance because:

112, 1st, written description: Applicant attaches results of searches in EMBL and Swissprot databases and urges that a number of sucrose transporters were known at the time of filing. This is not found persuasive. Several of the transporters are listed twice; once as DNA, the second time as protein (see for example Spinach, E. coli and Bacillus). Additionally amongst the list there are at least two very different types of transporters, sucrose-protein transporters and sucrose phosphotransporters; the plant type is the sucrose-protein transporter. All the plant type transporters are from dicots; no monocot transporters are taught. Thus, written description is not provided for the full scope of the claimed sucrose transporters. Lastly, no companion cell promoter other than RolC is described. 112, 1st, enablement: Applicant urges that a number of sucrose transporter genes were known at the time of filing. This is not found persuasive because sucrose transporters were not known to the full scope of the claims. Additionally, other companion cell promoters are not taught.

With respect to the recitation of "G21319", see below.

103 (b) over Frommer in view of Kuhn: Applicant urges that the premise that a sense construct would have the opposite effect of an antisense construct is faulty, and cites Busch et al and Woo et al, who each disclose instances in which the sense construct did not have the opposite effect of the antisense construct. Applicant urges that the premise of the rejection is faulty and not consistent with what would be expected by one of skill in the art, who would not expect the use of a promoter in a sense construct to have the same effect as use of a promoter in an antisense construct. This is not found persuasive. In the instant case Frommer et al teach that sense expression of a sucrose transporter from a constitutive promoter resulted in increased yield; Kuhn et al teach the RolC promoter. One of skill in the art would not expect that use of a different promoter would give different results. For Busch and Woo to be relevant, they would have had to have shown one result for the sense constructs with one promoter and a different result with another promoter. Thus, Busch and Woo do not apply to the instant case.

103 (b) over Frommer in view of Kuhn and further in view of Leggewie, maintained for the reasons above.

Continuation of 10. Other:

With respect to the recitation of "G21319", Applicant has amended the specification and provides a Declaration from Dr. Reismeier. Examiner answers: The Gi: numbers are not accession numbers (they're another sequence-specific number) while numbers starting with just G are accession numbers. HOWEVER, in the next sentence Applicant cites a paper by Reismeier (the Gi numbers is to that sequence) and on pg 13, lines 2-3, of the specification, applicant does recite the correct Accession numbers for the Reismeier sequence. Thus, support is found for the amendment..



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